

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

MEETING DATE: 8/17/05

DIVISION: COUNTY ADMINISTRATOR

BULK ITEM: YES

DEPARTMENT: AIRPORTS

STAFF CONTACT PERSON: Peter Horton

AGENDA ITEM WORDING: Approval of lease agreement with Federal Express for operations at the Key West International Airport.

ITEM BACKGROUND: Lease term, October 1, 2004 to September 30, 2009.

PREVIOUS RELEVANT BOCC ACTION: Approval of lease previous lease agreement, 9/18/02.

CONTRACT/AGREEMENT CHANGES: New agreement

STAFF RECOMMENDATION: Approval

TOTAL COST: Revenue Producing

BUDGETED: n/a

COST TO AIRPORT: None

SOURCE OF FUNDS n/a:

COST TO PFC: None

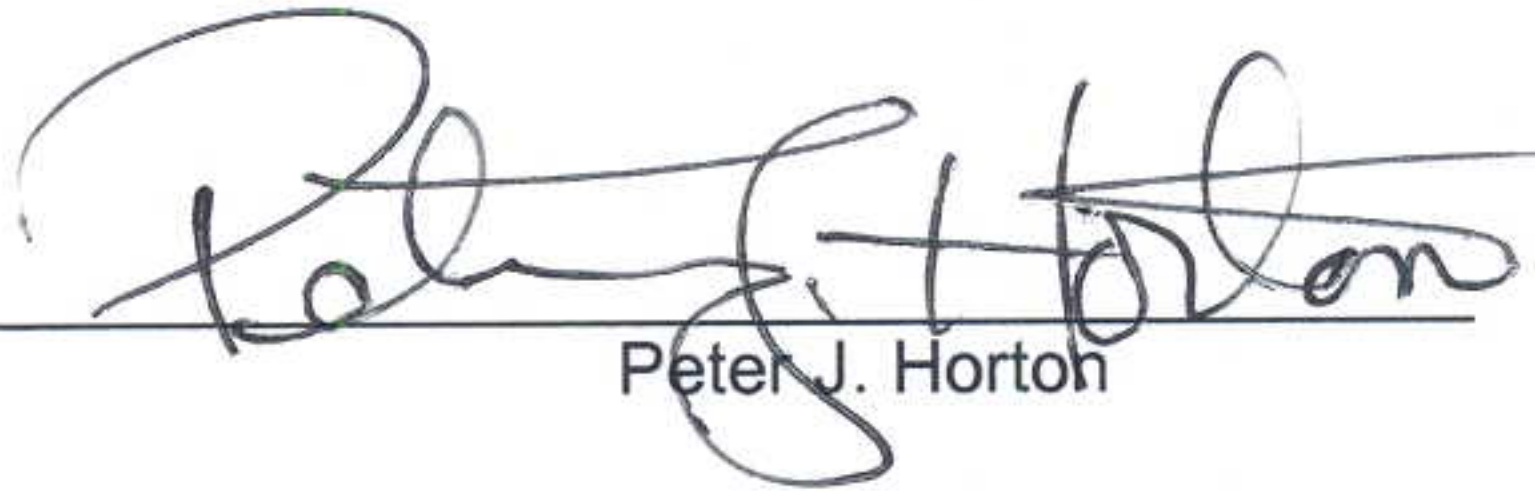
COST TO COUNTY: None

REVENUE PRODUCING: Yes

AMOUNT PER YEAR: ~ \$ 58,000.00

APPROVED BY: County Attorney X OMB/Purchasing X Risk Management X

AIRPORT DIRECTOR APPROVAL



Peter J. Horton

DOCUMENTATION: Included X

Not Required

AGENDA ITEM # _____

DISPOSITION: _____

/bev
APB

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract #

Contract with: Federal Express

Effective Date: 10/1/04

Expiration Date: 9/30/09

Contract Purpose/Description: Lease agreement for facility at the Key West International Airport

Contract Manager: Bevette Moore
(name)

5195
(Ext.)

Airports - Stop # 5
(Department/ Stop)

for BOCC meeting on: 8/17/05

Agenda Deadline: 8/2/05

CONTRACT COSTS

Total Dollar Value of Contract: Revenue producing

Current Year Portion: n/a

Budgeted? n/a

Account Codes: n/a

Grant: n/a

County Match: n/a

ADDITIONAL COSTS

Estimated Ongoing Costs: n/a
(not included in dollar value above)

For: .
(eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed Yes No	Reviewer	Date Out
Airports Director	<u>7/26/05</u>	() (X)	<u>Peter Horton</u>	<u>7/26/05</u>
Risk Management	<u>7/19/05</u>	() (X)	<u>for Risk Management</u>	<u>7/19/05</u>
O.M.B./Purchasing	<u>7/20/05</u>	() ()	<u>for OMB</u>	<u>7/22/05</u>
County Attorney	<u>7/19/05</u>	() ()	<u>Pedro Mercado</u> County Attorney	<u>7/19/05</u>

Comments:

**LEASE AGREEMENT
KEY WEST INTERNATIONAL AIRPORT
Federal Express Corporation**

THIS CONTRACT OF LEASE is made and entered into on this _____ day of _____, 2005, by and between **MONROE COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY" and **FEDERAL EXPRESS CORPORATION**, hereinafter referred to as "FEDEX."

WHEREAS, COUNTY owns an airport known as the Key West International Airport, located in Key West, Monroe County, Florida, hereinafter referred to as "AIRPORT," and

WHEREAS, FEDEX is engaged in the business of air transportation of cargo and other property, and

WHEREAS, FEDEX desires to obtain certain rights, services and privileges in connection with the use of the Airport facilities, and the COUNTY is willing to grant and lease the same to FEDEX on a non-exclusive basis, upon the terms and conditions hereinafter stated, now, therefore,

IN CONSIDERATION of the premises and of the mutual covenants and agreements herein contained, and other valuable considerations, COUNTY does hereby grant and lease unto FEDEX, and FEDEX does hereby lease from COUNTY, certain premises, facilities, rights, and privileges in connection with and on the Airport, as follows, to wit:

1. **Premises.** COUNTY does hereby lease to FEDEX, and FEDEX leases from the COUNTY, the Air Cargo building presently located at the Airport, measuring one hundred feet by thirty feet (100' x 30'), and nine thousand, five hundred thirty-five (9,535) square feet of open land adjacent to the building, and an aircraft apron measuring approximately eight thousand, eight hundred forty-two (8,842) square feet as indicated on the drawing labeled as Exhibit "A" attached hereto and made a part hereof.

2. **Use of the Airport.** FEDEX shall be entitled to use, in common with others authorized to do so, the airport facilities and appurtenances, together with all equipment, improvements, and services which have been or may hereafter be provided at or in connection with the Airport for common use, in the operation of a business for the transportation of cargo and other property by air.

3. **Term.** The term of this lease shall be sixty (60) months, commencing October 1, 2004, and ending on September 30, 2009.

4. **Rentals and Fees.** During the term of this lease, FEDEX shall pay to the COUNTY, rent as follows:

a) the amount of Forty-one Thousand, Four Hundred Twenty-three Dollars and 83/100 Cents (\$41,423.83) per annum, plus applicable sales tax, for the area of three thousand (3,000) square feet, in the existing Air Cargo building, and

b) the amount of Five Thousand, Three Hundred Fifty Dollars and 23/100 Cents (\$5,350.23) per annum, plus applicable sales tax, for an area of nine thousand, five hundred thirty-five

(9,535) square feet of open land adjacent to the Air Cargo building, for use for loading, unloading, and parking of automotive vehicles.

c) the amount of Five Thousand, Eight Hundred Eighty-seven Dollars and 44/100 Cents (\$5,887.44) per annum, plus applicable sales tax, for an area of eight thousand, eight hundred forty-two (8,842) square feet of aircraft apron adjacent to the Air Cargo building.

The lease amount agreed to herein may be adjusted annually in accordance with the percentage change in the Consumer Price Index for all urban consumers (CPI-U) for the most recent twelve (12) months available.

Rent for items a, b, and c shall be paid in equal monthly installments, all of which shall be due and payable on or before the first day of each calendar month during which this lease is in effect. Upon the failure of FEDEX to pay any installments when due, the COUNTY will be entitled to charge and collect, and FEDEX will be obligated to pay, a late fee of two percent (2%) of any such amount, if paid within thirty (30) days of the date due, and five percent (5%) of any such amount, not paid within thirty (30) days of the date due. Such late fees will be in addition to the amount of rent due. The acceptance by the COUNTY of the overdue rental installment plus applicable late fees shall cure what would otherwise constitute a default by FEDEX under the terms of this lease. The COUNTY, at its option, however, may refuse a proffered overdue rental installment and late fees, declare a default, and proceed according to paragraph 36 of this lease. In the event that any check, draft, or negotiable instrument by which FEDEX has tendered any rent payment is returned to the COUNTY and not honored, whether for insufficient funds or other reason, the COUNTY will be entitled to charge and collect, in addition to any applicable late payment fees as provided above, a fee of Twenty-five Dollars (\$25.00) for such dishonored instrument. Such penalty fee shall also be in addition to the amount of rent due. The acceptance by the COUNTY of the rental payment plus any applicable late fee and penalties following the receipt of a dishonored instrument shall cure what would otherwise constitute a default under the terms of this lease. The COUNTY, at its option, however, may refuse any proffered rental installment and applicable late fees and penalties, declare a default, and proceed according to paragraph 36 of this lease.

5. Security Deposit. In addition to the rent payment as provided above, FEDEX shall maintain with the COUNTY, the sum deposited, to-wit: an amount of Twenty-five Hundred Dollars (\$2,500.00), which the COUNTY will hold as a security deposit. In the event of any breach by FEDEX of any of the terms of this agreement, including any failure to timely pay any rent due, the COUNTY may draw upon the monies held by the COUNTY as security, to pay and cover any amounts due and owing from FEDEX.

6. Landing Fees. Landing fees shall be assessed at a rate to be established by the County's 2001 or an approved, updated Rates and Charges Study, subject to an adjustment on each January 1st for the term of the lease, in accordance with the percentage change in the CPI-U for the most recent twelve (12) months available.

The landing fees shall be computed, using the \$1.73 rate as an example only, as follows:

\$1.73 per 1,000 pounds of approved maximum gross landing weight, with no minimum fee.

FEDEX shall report to the Monroe County Board of County Commissioners, not later than the 10th day of each month, FEDEX's Actual Revenue Trip Arrivals at the Airport during the preceding calendar month, which shall include the number and type of such arrivals. The number of arrivals so

operated, multiplied by the applicable approved maximum gross landing weights for each type of aircraft, shall determine the weight for which the monthly payment shall be made.

The term "approved maximum gross landing weight" for any aircraft as used herein, shall be the maximum gross landing weight approved by the Federal Aviation Administration for landing such aircraft at the AIRPORT herein. FEDEX provides service to Key West, Florida utilizing a Cessna 208 Caravan. While this aircraft is owned by FEDEX, it is leased to and operated by Mountain Air Cargo (MAC) based in Denver, North Carolina. As such, MAC is responsible for all the operating expenses related to aircraft, including landing fees. Within fifteen (15) days after its receipt of written notice that MAC is unable to satisfy its obligations hereunder, FEDEX will assume the responsibility for ensuring that all payments and contractual agreements are maintained, or vacate the premises and this lease shall be terminated in accordance with paragraph 36.

7. Leasehold Improvements and Use. FEDEX shall have the right to occupy the Air Cargo building measuring one hundred feet by thirty feet (100' x 30'), and nine thousand, five hundred thirty-five (9,535) square feet of open land adjacent to the Air Cargo building, plus the aircraft apron, as indicated on the drawing labeled as Exhibit "A" attached hereto and made a part hereof.

FEDEX has the right during the term hereof, at its own expense, at any time from time to time, to install, maintain, operate, repair and replace any and all trade fixtures and other Airport personal property useful from time to time in connection with its operation on the Airport, all of which shall be and remain the property of FEDEX and may be removed by FEDEX prior to or within a reasonable time after expiration of the term of this agreement; provided, however, that FEDEX shall repair any damage to the premises caused by such removal. The failure to remove trade fixtures or other personal property shall not constitute FEDEX a hold over, but all such property not removed within ten (10) days after FEDEX receives a written demand for such removal shall be deemed abandoned and thereupon shall become the sole property of the Airport.

FEDEX shall cause to be removed any and all liens of any nature arising out of or because of any construction performed by FEDEX or any of its contractors or subcontractors on the leased premises or because of the performance of any work or labor upon or the furnishing of any materials for use at said premises, by or at the direction of FEDEX.

FEDEX may only utilize the leased building to provide counter space for members of the public desirous of using FEDEX's cargo and package services and for the operation of a business engaged in the transportation of cargo and other property. While premises are leased to FEDEX for parking, FEDEX shall not park or place automotive vehicles in any space on the premises unless it has been designated by the COUNTY for parking. The COUNTY shall cooperate with FEDEX in designating a reasonable number of parking spaces to accommodate FEDEX's business traffic.

8. Common Areas. FEDEX shall have the right to use, in common with others, the Airport space and facilities to permit landing, taking off, loading, unloading and servicing of FEDEX's aircraft, subject to reasonable rules and regulations of COUNTY as to the use of such common spaces and facilities.

9. Right of Ingress and Egress. FEDEX, its agents, employees, customers, suppliers, and patrons shall have the right of ingress and egress to and from the leased premises, which shall not be unreasonably restricted by the COUNTY.

10. Utilities. FEDEX shall be responsible for the payment of electrical service, water service, and any similar utility services as needed. In addition to rent and other charges, FEDEX shall

pay a trash collection fee of Two Thousand, Twelve Dollars and 62/100 Cents (\$2,012.62) per annum, paid monthly with the rent.

11. **Assignment.** The premises leased hereunder may not be sublet and this lease may not be assigned without the written consent of the COUNTY.

12. **Maintenance of Premises by FEDEX.** FEDEX shall be responsible for and shall properly maintain the leased premises, and upon the termination of this lease, shall leave the premises in at least as good condition as at the time of the commencement of this lease, normal use and occupancy excepted. FEDEX is responsible for and shall properly maintain the security fences and gates surrounding the leased premises and is also responsible for properly securing any portion of the premises being remodeled or under construction.

13. **Inspection and Maintenance of Premises by County.** The County and its authorized officers, employees, agents, contractors, subcontractors and other representatives shall have the right to enter upon the leased premises for the following purposes:

- a) to inspect the leased premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether FEDEX has complied and is complying with the terms and conditions of this agreement with respect thereto;
- b) to perform essential maintenance, repair, relocation, or removal of existing underground and overhead wires, pipes, drains, cables and conduits now located on or across the leased premises, and to construct, maintain, repair, relocate, and remove such facilities in the future as necessary to carry out the Master Plan of development of the Airport; provided, however, that said work shall in no event unduly interfere with the operations of FEDEX and, provided further, that the entire cost of such work, including but not limited to the cost of rebuilding, removing, relocating, protecting or otherwise modifying any fixed improvements at any time erected or installed in or upon the leased premises by FEDEX, the COUNTY or third parties, as a result of the exercise by the COUNTY of its rights hereunder, and all damage to such fixed improvements caused thereby, shall be borne by the COUNTY.

14. **Insurance Requirements**

a) FEDEX will obtain or possess the following insurance coverages and will provide Certificates of Insurance to COUNTY to verify such coverage;

Commercial General Liability. FEDEX shall provide coverage for all premises and operations including Contractual, Products, and Completed Operations, and Personal/Advertising Injury. The limits shall not be less than;

- \$5,000,000 Combined Single Limits (CSL) or its equivalent
- If split limits are provided, the minimum limits acceptable shall be;
- \$5,000,000.00 per occurrence,
- \$500,000 per person,
- \$100,000 Property Damage

The General Aggregate limit shall either apply separately to this agreement or shall be at least twice the required occurrence limits.

Business Automobile Liability. FEDEX shall provide coverage for all owned, non-owned and hired vehicles with limits of not less than;

- \$5,000,000 CSL or its equivalent
- If split limits are provided, the minimum limits acceptable shall be;

\$5,000,000 per occurrence
\$500,000 per person
\$100,000 Property Damage

Professional Aviation Liability. FEDEX will provide coverage for limits of not less than \$30,000,000.00 CSL, including passengers, or its equivalent.

Worker's Compensation. FEDEX shall provide coverage with limits sufficient to respond to the applicable state statutes.

Employer's Liability. FEDEX shall provide Employer's Liability insurance with limits of not less than;

\$1,000,000 Bodily Injury by Accident,
\$1,000,000 Bodily Injury by Disease, policy limits and
\$1,000,000 Bodily Injury by Disease, each employee.

Property Insurance. FEDEX shall provide coverage for all premises governed by this agreement with limits no less than the Replacement Cost Value of the leased premises and as a minimum shall include coverages consistent with the latest version of the Special Form as filed by the Insurance Services Office (ISO) and shall include as a minimum coverage for claims arising out of Fire, Sprinkler Leakage, Windstorm, Civil Commotion, Lightning, Sinkhole Collapse, Smoke, Aircraft and Vehicle Damage, Vandalism, Falling Objects, Explosion and Flood.

b) The Monroe County Board of County Commissioners will be included as "Additional Insured" on all policies, except for Worker's Compensation.

In addition, the Monroe County Board of County Commissioners shall be named as loss payee on any property insurance placed on the leased facilities.

c) All insurance policies must specify that they are not subject to cancellation, non-renewal, material change, or reduction in coverage unless a minimum of thirty (30) days prior notification is given to the COUNTY by the insurer.

d) The acceptance and/or approval of FEDEX'S insurance shall not be construed as relieving FEDEX from any liability or obligation assumed under this lease or imposed by law.

e) FEDEX shall maintain the required insurance throughout the entire term of this lease and any extensions which may be entered into. The COUNTY, at its sole option, has the right to request a certified copy of any and all insurance policies required by this lease. Failure to comply with this provision shall be considered a default and the COUNTY may terminate the lease in accordance with paragraph 36.

f) Non-Waiver of Immunity. Notwithstanding the provision of Sec. 768.28, Florida Statutes, the participation of COUNTY and FEDEX in this agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government liability insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY be required to contain any provision for waiver.

Any deviations from these General Insurance Requirements must be requested in writing on the COUNTY prepared form entitled, "Request for Waiver of Insurance Requirements" and be approved by Monroe County Risk Management.

15. Books, Records and Documents. FEDEX shall maintain all books, records, and documents directly pertinent to performance under this agreement in accordance with generally accepted accounting principles consistently applied. Each party to this agreement or their authorized representatives shall have reasonable and timely access to such records of each other party for public records purposes during the term of the agreement and for four (4) years following the termination of this agreement. The COUNTY, acting through its Finance Director or other authorized representative, shall have the right to inspect and audit FEDEX's books of accounts and other records directly generated at the Key West International Airport facility or otherwise pertaining to this agreement. Knowingly furnishing the COUNTY a false statement of its Actual Revenue Trip Arrivals under the provision hereof will constitute a default by FEDEX of this agreement and the COUNTY may, at its option, declare this lease terminated. FEDEX retains the right to have its controller or a representative assigned by its controller to be present during any inspection or audit by the COUNTY. Ten (10) business days notice must be given of intent to audit by the COUNTY to allow FEDEX's controller sufficient time to schedule said presence. Nothing contained within this section waives attorney/client or attorney work product privilege.

16. Governing Law, Venue, Interpretation, Costs, and Fees. This agreement shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts made and to be performed entirely in the State. In the event that any cause of action or administrative proceeding is instituted for the enforcement or interpretation of this agreement, the COUNTY and FEDEX agree that venue will lie in the appropriate court or before the appropriate administrative body in Monroe County, Florida.

The COUNTY and FEDEX agree that, in the event of conflicting interpretations of the terms or a term of this agreement by or between any of them the issue shall be submitted to mediation prior to the institution of any other administrative or legal proceeding.

17. Severability. If any term, covenant, condition or provision of this agreement (or the application thereof to any circumstance or person) shall be declared invalid or unenforceable to any extent by a court of competent jurisdiction, the remaining terms, covenants, conditions and provisions of this agreement, shall not be affected thereby; and each remaining term, covenant, condition and provision of this agreement shall be valid and shall be enforceable to the fullest extent permitted by law unless the enforcement of the remaining terms, covenants, conditions and provisions of this agreement would prevent the accomplishment of the original intent of this agreement. The COUNTY and FEDEX agree to reform the agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision.

18. Attorney's Fees and Costs. The COUNTY and FEDEX agree that in the event any cause of action or administrative proceeding is initiated or defended by any party relative to the enforcement or interpretation of this agreement, the prevailing party shall be entitled to reasonable attorney's fees, court costs, investigative and out-of-pocket expenses, as an award against the non-prevailing party, and shall include attorney's fees, court costs, investigative, and out-of-pocket expenses in appellate proceedings. Mediation proceedings initiated and conducted pursuant to this agreement shall be in accordance with the Florida Rules of Civil Procedure and usual and customary procedures required by the Circuit Court of Monroe County.

19. **Binding Effect.** The terms, covenants, conditions, and provisions of this agreement shall bind and inure to the benefit of the COUNTY and FEDEX and their respective legal representatives, successors, and assigns.

20. **Authority.** Each party represents and warrants to the other that the execution, delivery and performance of this agreement have been duly authorized by all necessary COUNTY and corporate action, as required by law.

21. **Claims for Federal or State Aid.** FEDEX and COUNTY agree that each shall be, and is, empowered to apply for, seek, and obtain Federal and State funds to further the purpose of this agreement; provided that all applications, requests, grant proposals, and funding solicitations shall be approved by each party prior to submission.

22. **Adjudication of Disputes or Disagreements.** COUNTY and FEDEX agree that all disputes and disagreements shall be attempted to be resolved by meet and confer sessions between representatives of each of the parties. If no resolution can be agreed upon within thirty (30) days after the first meet and confer session, the issue or issues shall be discussed at a public meeting of the Board of County Commissioners. If the issue or issues are still not resolved to the satisfaction of the parties, then any party shall have the right to seek such relief or remedy as may be provided by this agreement by Florida law.

23. **Cooperation.** In the event any administrative or legal proceeding is instituted against either party relating to the formation, execution, performance, or breach of this agreement, COUNTY and FEDEX agree to participate, to the extent required by the other party, in all proceedings, hearings, processes, meetings, and other activities related to the substance of this agreement or provision of the services under this agreement. COUNTY and FEDEX specifically agree that no party to this agreement shall be required to enter into any arbitration proceedings related to this agreement. A party who requests the other's party's participation in accordance with the terms of this section shall pay all reasonable expenses incurred by the other party by reason of such participation.

24. **Nondiscrimination.** COUNTY and FEDEX agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that FEDEX has discriminated against any person, this agreement automatically terminates without any further action on the part of any party, effective the date of the Court order. COUNTY or FEDEX agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685 -1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975; as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended; relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as may be amended from time to time, relating to nondiscrimination based of disability; 10) Secs. 13-101, et seq., Monroe County Code, relating to

discrimination based on race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identify or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or State statutes which may apply to the parties to, or the subject matter of, this agreement.

25. Covenant of No Interest. The COUNTY and FEDEX covenant that neither presently has any interest, and shall not acquire any interest, which would conflict in any manner or degree with its performance under this agreement, and the only interest of each is to perform and receive benefits as recited in this agreement.

26. Code of Ethics. The COUNTY agrees that officers and employees of the COUNTY recognize and will be required to comply with the standards of conduct for public officers and employees as delineated in Section 112.313, Florida Statutes, regarding, but not limited to solicitation or acceptance of gifts; doing business with one's agency; unauthorized compensation; misuse of public position, conflicting employment or contractual relationship; and disclosure or use of certain information.

27. Public Access. The COUNTY and FEDEX shall allow and permit reasonable access to, and inspection of, all documents, papers, letters or other materials in its possession or under its control subject to the provisions of Chapter 119, Florida Statutes, and made or received by the COUNTY and FEDEX in conjunction with this agreement; and the COUNTY shall have the right to unilaterally cancel this agreement upon violation of this provision by FEDEX. Nothing in this section waives attorney/client or attorney work product privilege.

28. Non-Waiver of Immunity. Notwithstanding the provisions of Sec. 286.28, Florida Statutes, the participation of the COUNTY and the FEDEX in this agreement and the acquisition of any commercial liability insurance coverage, self-insurance coverage, or local government insurance pool coverage shall not be deemed a waiver of immunity to the extent of liability coverage, nor shall any contract entered into by the COUNTY be required to contain any provision for waiver.

29. Privileges and Immunities. All of the privileges and immunities from liability, exemptions from laws, ordinances, and rules and pensions and relief, disability, workers' compensation, and other benefits which apply to the activity of officers, agents, or employees of any public agents or employees of the COUNTY, when performing their respective functions under this agreement within the territorial limits of the COUNTY shall apply to the same degree and extent to the performance of such functions and duties of such officers, agents, volunteers, or employees outside the territorial limits of the COUNTY.

30. Legal Obligations and Responsibilities. Non-Delegation of Constitutional or Statutory Duties. This agreement is not intended to, nor shall it be construed as, relieving any participating entity from any obligation or responsibility imposed upon the entity by law except to the extent of actual and timely performance thereof by any participating entity, in which case the performance may be offered in satisfaction of the obligation or responsibility. Further, this agreement is not intended to, nor shall it be construed as, authorizing the delegation of the constitutional or statutory duties of the COUNTY, except to the extent permitted by the Florida Constitution, State Statute, and case law.

31. Non-Reliance by Non-Parties. No person or entity shall be entitled to rely upon the terms, or any of them, of this agreement to enforce or attempt to enforce any third-party claim or entitlement to or benefit of any service or program contemplated hereunder, and the COUNTY and

agree that neither the COUNTY nor FEDEX or any agent, officer, or employee of either shall have authority to inform, counsel, or otherwise indicate that any particular individual or group of individuals, entity or entities, have entitlements or benefits under this agreement separate and apart, to, or superior to the community in general or for the purposes contemplated in this agreement.

32. **Attestations.** FEDEX agrees to execute such documents as the COUNTY may lawfully require, to include a Public Entity Crime Statement, an Ethics Statement, and a Drug-Free Workplace Statement.

33. **No Personal Liability.** NO covenant or agreement contained herein shall be deemed to be a covenant or agreement of any member, officer, agent or employee of Monroe County or her individual capacity, and no member, officer, agent or employee of Monroe County shall be liable personally on this agreement or be subject to any personal liability or accountability by reason of the execution of this agreement.

34. **Execution in Counterparts.** This agreement may be executed in any number of counterparts, each of which shall be regarded as an original, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this agreement by signing any counterpart.

35. **Section Heading.** Section headings have been inserted in this agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this agreement and will not be used in the interpretation of any provision of this agreement.

36. **Default.** Unless the COUNTY has accepted a rental installment after it has become due together with any applicable late payments and penalties, the failure to pay rental installments when due shall constitute a default under the terms of this lease. The failure to pay any other charges or fees when due under this lease shall constitute a default. Further, the failure of FEDEX to perform any other of the covenants of this lease, which failure shall constitute a default for a period of fifteen (15) days, or for such longer period of time as may be reasonably required to rectify said failure through the exercise of prompt, diligent and continuous action, after notice thereof is given to FEDEX in writing by the COUNTY, shall also constitute a default under the terms of this lease. In the event a default, the COUNTY may, at its option, declare the lease forfeited and may immediately re-enter and take possession of the leased premises and this lease shall terminate. If it shall be necessary to employ the services of an attorney in order to enforce its right under this paragraph, or to collect any of its rentals, fees, or charges due, the COUNTY shall be entitled to reasonable attorney's fees.

37. **CANCELLATION OF LEASE.** The COUNTY may cancel this lease agreement by giving FEDEX sixty (60) days advanced written notice upon the happening of any one of the following events: the appointment of a receiver of FEDEX's assets; the divesting of FEDEX's leasehold estate by other operation of law; the abandonment by FEDEX of its air cargo transportation business at the Airport for a period of sixty (60) days. By the end of the sixty (60) day notice period, FEDEX shall have vacated the premises and the COUNTY may immediately re-enter and take possession of the same. If it is necessary to employ the services of an attorney in order to enforce the COUNTY's rights under this paragraph, the COUNTY shall be entitled to reasonable attorney's fees.

38. **FAA REQUIREMENTS.** The parties shall comply with FAA Required Lease Clauses, which are listed in Exhibit C, attached hereto and made a part hereof.

39. AIRPORT SECURITY.

a. General. The Federal Transportation Security Administration is the federal agency primarily responsible for overseeing the security measures utilized by the airport owner pursuant to the relevant provisions of Chapter 49, United States Code, and regulations adopted under the authority of the Code, including but not limited to 49 CFR 1540, et seq. Violations of the statutes or regulations may result in severe civil monetary penalties being assessed against the airport operator. It is the intent of the airport operator that the burdens and consequences of any security violations imposed upon the airport operator as a result of actions by an airport tenant or the airport tenant's employees, agents, invitees, or licensees shall be borne by the airport tenant.

b. Airport Tenant Defined. An airport tenant means any person, entity, organization, partnership, corporation, or other legal association that has an agreement with the airport operator to conduct business on airport property. The term also includes an airport tenant as defined in 49 CFR 1540.5. Each signatory to this agreement, other than the airport operator, is an airport tenant.

c. Airport Operator Defined. As used in this agreement, airport operator means Monroe County, Florida, its elected and appointed officers, and its employees.

d. Airport Property Defined. Airport property shall mean the property owned or leased by, or being lawfully used by, the airport operator for civil aviation and airport-related purposes. For purposes of this agreement, airport property is the property generally referred to as the Key West International Airport, the Florida Keys Marathon Airport, or both as may be set forth in this agreement.

e. Inspection Authority. The airport tenant agrees to allow Transportation Security Administration (TSA) authorized personnel, at any time or any place, to make inspections or tests, including copying records, to determine compliance of the airport operator or airport tenant with the applicable security requirements of Chapter 49, United States Code, and 49 CFR 1540, et seq.

f. Airport Security Program. The airport tenant agrees to become familiar, to the extent permitted by the airport operator, with the Airport Security Program promulgated by the airport operator and approved by TSA, and also agrees to conform its' operations and business activities to the requirements of the Airport Security Program.

g. Tenant Security Program. If permitted under TSA regulations, the airport tenant may voluntarily undertake to maintain an Airport Tenant Security Program as referred to in 49 CFR 1542.113. If the airport tenant voluntarily promulgates an Airport Tenant Security Program that is approved by TSA, such program, as may be amended and approved from time to time, shall be automatically incorporated into this agreement.

h. Breach of Agreement. Should TSA determine that the airport tenant or one or more of the airport tenant's employees, agents, invitees, or licensees has committed an act or omitted to act as required, and such act or omission is a violation which results in TSA imposing a civil penalty against the airport operator in accordance with TSA's Enforcement Sanction Guidance Policy, such determination and imposition of a civil penalty by TSA shall be considered a significant breach of this agreement.

(1) Minimum Violation. If the violation is the first or second violation attributed to the airport tenant and is a civil penalty "minimum violation" as provided for in TSA's Enforcement Sanction Guidance Policy, the airport tenant may cure the breach by paying to the airport operator the total costs

incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, mitigating, compromising, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures. If the violation is a third violation, or there are multiple violations in excess of two violations, that is or are a civil penalty "minimum violation," the airport tenant shall pay to the airport operator the total costs incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures; and, further, the airport operator shall have the right to unilaterally cancel this agreement, such cancellation to be effective thirty (30) calendar days after receipt by the airport tenant of written notice of cancellation of this agreement by the airport operator.

(2) Moderate Violation. If the violation is the first or second violation attributed to the airport tenant and is a civil penalty "moderate violation" as provided for in TSA's Enforcement Sanction Guidance Policy, the airport tenant may cure the breach by paying to the airport operator the total costs incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures; and, further, the airport tenant may cause all of airport tenant's employees involved in the airport tenant's business operations on the airport property to undergo such security training as may be required by the airport operator. The total cost of the training shall be paid for by the airport tenant. If the violation is a third violation, or there are multiple violations in excess of two violations, that is or are a civil penalty "moderate violation," the airport tenant shall pay to the airport operator the total costs incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures; and, further, the airport operator shall have the right to unilaterally cancel this agreement, such cancellation to be effective thirty (30) calendar days after receipt by the airport tenant of written notice of cancellation of this agreement by the airport operator.

(3) Maximum Violation. If the violation is the first violation attributed to the airport tenant and is a civil penalty "maximum violation" as provided for in TSA's Enforcement Sanction Guidance Policy, the airport tenant may cure the breach by paying to the airport operator the total costs incurred by the airport operator, including any fines and penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures; and, further, the airport tenant may cause all of airport tenant's employees involved in the airport tenant's business operations on the airport property to undergo such security training as may be required by the airport operator. The total cost of the training shall be paid for by the airport tenant. If the violation is a second violation, or there are multiple violations, that is or are a civil penalty "maximum violation," the airport tenant shall pay to the airport operator the total costs incurred by the airport operator, including any fines or penalties imposed, in investigating, defending, compromising, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, compromising, mitigation, or taking of remedial action measures; and, further, the airport operator shall have the right to unilaterally cancel this agreement, such cancellation to be effective thirty (30) calendar days after receipt by the airport tenant of written notice of cancellation of this agreement by the airport operator.

(4) Mitigation of Breach. TSA has a policy of forgoing civil penalty actions when the airport operator detects violations, promptly discloses the violations to TSA, and takes prompt corrective action to ensure that the same or similar violations do not recur. This policy is known as the TSA Voluntary Disclosure Program Policy, and is designed to encourage compliance with TSA regulations, foster secure practices, and encourage the development of internal evaluation programs. The airport tenant agrees that upon detecting a violation the airport tenant will immediately report it to the airport operator. Should the TSA ultimately determine that the violation was committed by the airport tenant, or an employee, agent, invitee, or licensee of the airport tenant, but the violation should result in the issuance of a letter of correction in lieu of a civil penalty, then the airport tenant shall reimburse the airport operator the total costs incurred by the airport operator in investigating, defending, mitigating, or taking of remedial measures as may be agreed to by TSA, to include but not be limited to reasonable attorney's fees and costs incurred in the investigation, defense, mitigation, or taking of remedial action measures. A violation resulting in the issuance of a letter of correction shall not be considered to be a breach of this agreement by the airport tenant.

(5) Survival of Subsection. This subsection shall survive the cancellation or termination of this agreement, and shall be in full force and effect.

40. Hold Harmless; Indemnification; Defense; Release; Survival. Notwithstanding any minimum insurance requirements prescribed elsewhere in this agreement, FEDEX shall defend, indemnify and hold the COUNTY and the COUNTY's elected and appointed officers and employees harmless from and against (i) any claims, actions or causes of action, (ii) any litigation, administrative proceedings, appellate proceedings, or other proceedings relating to any type of injury (including death), loss, damage, fine, penalty or business interruption, and (iii) any costs or expenses (including, without limitation, costs of remediation and costs of additional security measures that the Federal Aviation Administration, the Transportation Security Administration or any other governmental agency requires by reason of, or in connection with a violation of any federal law or regulation, attorney's fees and costs, court costs, fines and penalties) that may be asserted against, initiated with respect to, or sustained by, any indemnified party by reason of, or in connection with, (A) any activity of FEDEX or any of its employees, agents, contractors or other invitees on the Airport during the term of this lease, (B) the negligence or willful misconduct of FEDEX or any of its employees, agents, contractors or other invitees, or (C) FEDEX's default in respect of any of the obligations that it undertakes under the terms of this lease, except to the extent the claims, actions, causes of action, litigation, proceedings, costs or expenses arise from the intentional or sole negligent acts or omissions of the COUNTY or any of its employees, agents, contractors or invitees (other than FEDEX). Insofar as the claims, actions, causes of action, litigation, proceedings, costs or expenses relate to events or circumstances that occur during the term of this lease, this Section will survive the expiration of the term of this lease or any earlier termination of this lease.

IN WITNESS WHEREOF, the parties have caused this lease to be executed this _____ day
of _____, 2005.

(SEAL)
ATTEST: DANNY L. KOLHAGE, CLERK

**BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA**

By _____
Deputy Clerk

By _____
Mayor/Chairman

FEDERAL EXPRESS CORPORATION

Witness
J. Lynn House

Witness

By *Kiley Johnson Jr.*

Managing Director, Real Estate
Title _____
And Airport Development

(DCT Rev. 6/9/2005)

MR 7/7/05

Approved
Legal Department
Ronald S. Kwoka (5662)

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM.
Pedro J. Mercado

PEDRO J. MERCADO
ASSISTANT COUNTY ATTORNEY

EXHIBIT 'A'

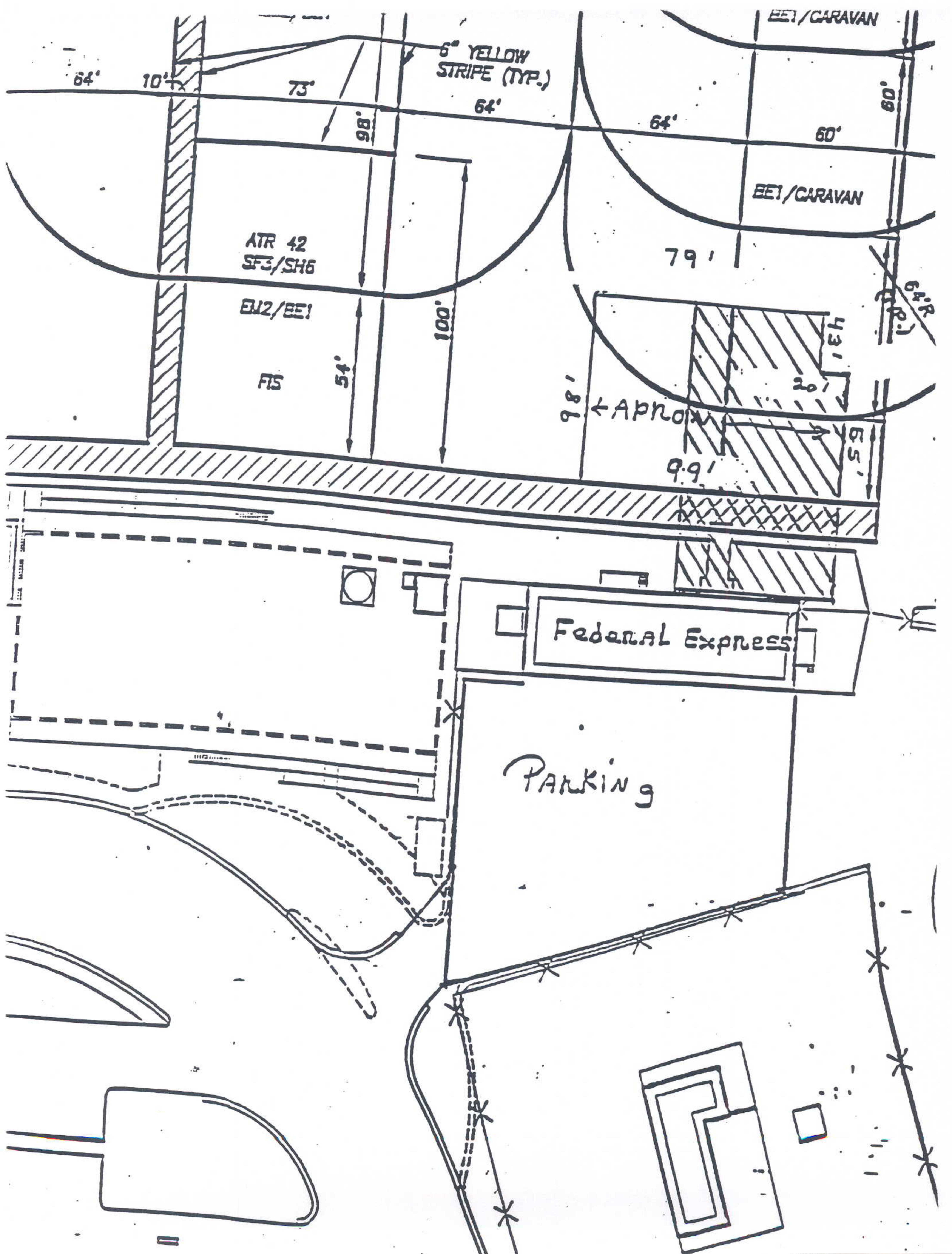


EXHIBIT 'C'

RECEIVED

DEC 23 1993

AIRPORTS/OMB

FAA REQUIRED LEASE CLAUSES

1. This lease shall be subject to review and re-evaluation at the end of each _____ year period, by the airport owner and the rent may be adjusted according to their action, not to exceed the Consumer Price Index rate during the last _____ month period, or;

Land less improvements will be appraised every 5 years and the adjusted rental will be based on normally 10-12 percent of appraised value. If disputed, lessor obtains appraisal at his expense and lessor/lessee equally share expense for review appraisal that establishes fair market value.

2. The tenant for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

That in the event of breach of any of the above nondiscrimination covenants, Airport Owner shall have the right to terminate the lease and to re-enter and as if said lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of Federal Regulations, Part 21 are followed and completed including exercise or expiration of appeal rights.

3. It shall be a condition of this lease, that the lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft,

now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport.

That the Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Federal Aviation Regulations, Part 77.

That the Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport, or otherwise constitute an airport hazard.

4. This lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the Airport Owner acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the lease of said lands from the Airport Owner, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the Airport Owner pertaining to the
_____ Airport.

5. Notwithstanding anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are nonexclusive and the Lessor herein reserves the right to grant similar privileges to another Lessee or other Lessees on other parts of the airport.

RECEIVED

DEC 23 1993

AIRPORTS/OMB